

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

AUG 1 1994

J. BARON GROSHON

BY: edc  
Deputy Clerk

In Re:

Jeffrey A. Campbell  
Cynthia A. Campbell,  
  
Debtors.

) Case No. 93-30847  
) Chapter 13  
)  
)  
)  
)  
)

JUDGEMENT ENTERED ON AUG 1 1994

ORDER DENYING DEBTORS' OBJECTION TO SECOND AMENDED CLAIM OF  
INTERNAL REVENUE SERVICE

This matter is before the court on the debtors' objection to the second amended claim filed by the Internal Revenue Service ("I.R.S."). The I.R.S. amended their claim to reflect the unpaid withholding taxes owed by the debtors to the I.R.S. which accrued several years ago while the debtors operated a now defunct sole proprietorship known as Job Directory. The sequence of significant events is as follows:

- 1) On June 9, 1993 the debtors filed this chapter 13 bankruptcy petition in the Western District of North Carolina.<sup>1</sup>
- 2) On June 17, 1993 the Clerk of Bankruptcy Court mailed the Notice of Meeting of Creditors which clearly stated that any claims not filed on or before October 5, 1993 would not be allowed except as provided by law.
- 3) On July 16, 1993 this court entered its order confirming the debtors' chapter 13 plan.

---

<sup>1</sup> The debtors previously filed for bankruptcy in the Middle District of Florida on June 27, 1991. The debtors' chapter 7 case was subsequently converted to a chapter 13 proceeding by that court on January 8, 1992. Although the Florida bankruptcy proceeding is unrelated to the current North Carolina bankruptcy proceeding and the facts surrounding the two filings are not identical, the Florida filing is mentioned to note that the I.R.S. in that case did timely file a proof of claim for the unpaid Job Directory withholding taxes.

4) On September 16, 1993 the I.R.S. filed its initial proof of claim which made no mention of the unpaid Job Directory withholding taxes owed by the debtors.

5) On November 24, 1993 the I.R.S. amended their claim which again did not reference the Job Directory taxes.

6) On March 24, 1994, the I.R.S. again amended its claim and added for the first time \$68,621.64 for the Job Directory taxes, penalties and interest.

The debtors object to this second amended claim of the I.R.S. on the grounds that this claim was filed over five (5) months after the October 5, 1993 "bar date" and should therefore be disallowed as untimely.

The I.R.S. counters the debtors' objection on two grounds. First, the I.R.S. argues that the debtors failed to provide all required information in their bankruptcy petition and therefore did not provide the I.R.S. with adequate notice from which it should have known to file its claim for the unpaid Job Directory taxes. Secondly, the I.R.S. argues that in light of In re Hausladen, 146 B.R. 559 (Bankr. D. Minn. 1992), lateness is not a ground for disallowing the I.R.S. claim.

#### I. The "Bar Date" and In re Hausladen

The court is impressed with the reasoning and statutory interpretation of In re Hausladen. However, the court is constrained to follow the dictates of the Fourth Circuit Court of Appeals which has ruled to the contrary. See In re Davis, 936 F.2d 771 (4th Cir. 1991). While the Davis opinion does not squarely control this case, it does discuss the policy of strict-

ly enforcing "bar dates". Chief Justice Ervin spoke of the "manifest injustice" which would result if "bar dates" were not given effect. Consequently this court must reject the I.R.S.'s argument based on In re Hausladen.

II. Debtors' failure to provide the I.R.S. with adequate notice

The I.R.S. also asserts that their second amended claim should be allowed because the debtors failed to provide the I.R.S. proper notice of this bankruptcy case. In support of their position, the I.R.S. points to the filing requirements contained in Rule 1005, entitled Caption of Petition. This Rule states that the caption of the petition must include the following information in the title of the case:

The title of the case shall include the name, social security number and employer's tax identification of the debtor and all other names used by the debtor within six years before the filing of the petition.

Fed.R.Bankr.P. Rule 1005.

It is undisputed that the debtors failed to provide the employer's tax identification number in the caption of their petition. The debtors interpret Rule 1005 to require the filing of only those employer tax identification numbers used by a debtor within the last six years. The debtors attempt to justify their omission of the Job Directory employer tax identification number from the caption of their petition on the grounds that Job Directory ceased operations over six years ago.

The court concludes that the six year limitation in Rule 1005 applies only to the last phrase which deals with "other names used by the debtor." The six year limitation does not apply to the filing of the debtor's name, social security number and employer tax identification number. Not only is this a more natural reading of Rule 1005, but this reading is further supported in light of the testimony provided at the July 26, 1994 hearing. At that hearing, a representative of the I.R.S. provided uncontroverted testimony that an employer tax identification number assigned to a debtor as an owner of a sole proprietorship will permanently remain with that debtor. Although Job Directory ceased operations several years ago, this same tax identification number assigned to the debtors remains active and effective, and should have been listed on the debtors' petition.

The debtors failed to comply with their statutory duty and must now bear the consequences of failing to provide the required information. Their omission deprived the I.R.S. of the notice a creditor is entitled to receive. This lack of adequate notice placed the I.R.S. in a situation comparable to that where a debtor omits the listing of a creditor. The debtors' failure to list the tax identification number deprived the I.R.S. of adequate notice.

The debtors argue that a previous Florida bankruptcy filing gave the I.R.S. other avenues by which it could have deduced the information omitted by the debtor. While that may have been possible, it was not required of the I.R.S. The court is unable

to allow the debtors to insist upon the mechanical application of Rule 3002 to bar the I.R.S. claim as untimely and simultaneously forgive the debtors for their failure to abide by the technical requirements of Rule 1005. Though the debtors argue that equity demands the disallowance of the I.R.S. claim, the debtors would be hard pressed to find a more inequitable and blatantly inconsistent course of action for this court to follow.

This ruling comports with the long standing policy of this court to allow otherwise valid claims in the face of purely procedural objections. This court finds that in this case, the allowance of the I.R.S. claim, although it is filed 5 months after the October 5, 1993 bar date, will not result in prejudice to the debtors or any other creditor in this case. As such, the I.R.S. is allowed its late filed claim for the unpaid Job Directory taxes on account that it was deprived of the requisite notice and opportunity to have timely filed its claim in this case.

It is therefore ORDERED that second amended claim of the Internal Revenue Service is allowed, and the debtors' objection to the same is overruled.

This the 1st day of August, 1994.

  
\_\_\_\_\_  
George R. Hodges  
United States Bankruptcy Judge